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Lawmakers eye what-ifs of budget crisis

PHOENIX - State lawmakers are trying to figure out who will patrol the highways, guard the prisoners, run the universities, care for nursing home patients and open the gates to the parks on July 1.

While that may be just a date on the calendar, that's when Arizona's new fiscal year begins. If there is no budget adopted by that date - and lawmakers as of Monday did not appear close - there may not be authorization to spend any money.

And that includes paying state employees to come to work.

Rep. Russell Pearce, R-Mesa, who chairs the House Appropriations Committee, said he presumes the state constitution gives Gov. Janet Napolitano sufficient emergency powers to keep "essential" services operating. He said, though, it is less than clear exactly what those are.

On one extreme, he said, are probably things like keeping people in state prisons.

But state Treasurer Dean Martin said that doesn't necessarily mean it's legal to pay corrections officers to come to work. He said it could require the governor to call out the National Guard to staff the prisons, something Martin said was part of a contingency plan Gov. Fife Symington came up with in 1992.

That same plan, Martin said, actually included closing state parks just prior to the July 4 holiday.

Lawmakers that year technically did not meet the June 30 deadline for action that year. But there were no layoffs, no troops were called out, and no parks were closed, because the budget actually got enacted the following day.

The degree of separation this year between the Republican-controlled Legislature and the Democrat governor, though, has lawmakers at least considering the worst-case scenario.

"We ought to be prepared, said Sen. Bob Burns, R-Peoria, Pearce's counterpart in the Senate.

Members of the House and Senate Appropriations committees are going to get a briefing today from various sources of exactly what they believe the law allows. That includes not only the Legislature's own lawyers but also the state Department of Administration which is under the control of the governor.

Martin said the problem will not be money.

"People will continue to pay their taxes July 1," he said. And because lawmakers adopted a two-year budget last year for the Department of Revenue, that agency has the authorization it needs to continue paying people to open the envelopes and deposit the payments.

But Martin said lawmakers gave just a one-year budget last year to the Department of Administration, the agency that processes the paychecks for those Department of Revenue

employees. So there may not be anyone who can pay those workers.

The Parks Department also has a two-year budget and need not shutter - assuming workers who may or may not be paid show up.

That all goes to what powers the governor has to declare an emergency and whether she can declare certain services like state payroll - and the employees who perform them - "essential."

"There's no clear rule on that," said Administration Director Bill Bell.

"We will just have to go through, agency by agency, and make some judgments about what we consider to be essential personnel," he said. "That's the nightmare that looms in a scenario like this."

And everyone else, Bell said, could be laid off, without pay. But even that, said Bell, is not that simple.

He said state personnel rules give certain people with seniority "bumping rights." Bell said that could allow someone whose job is determined to be non-essential and would otherwise be laid off to demand to be put into an essential job, forcing the state to let that person who had that job go.

Martin said "uncovered" employees - those not covered by the personnel rules - probably could continue to come to work even if their jobs are not considered essential and hope that, once a budget is adopted, they will get back pay. But Martin said he doubts that option is available for "covered" workers.

Alberto Gutier, who worked for the Department of Administration under Symington the last time this occurred, said there may even be legal barriers to workers volunteering. That's because the state would not provide liability coverage for injuries they cause others.

The preparation is necessary because Arizona has no legal authority to enact a "continuing resolution." That process, used by Congress when there is no budget at the end of the federal fiscal year, keeps all spending at current levels.

But Pearce said that legal gap is irrelevant with an anticipated \$2.2 billion gap between revenues and expenses. He said the state cannot keep spending at the current rate.

By Howard Fischer **Capitol Media Services**